90-1479

Supreme Court, U.S.
FILED
MAR 21 1991
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM, 1991

ELAINE E. GROVER —
PETITIONER

VS.

ROCHELEAU, FOURNIER AND LABEL, PA.
WILLIAM ROCHELEAU, JR. AND
PAUL FOURNIER —
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT SITTING AS THE LAW COURT FOR THE STATE OF MAINE

Elaine E. Grover
R.R. #3, Box 937
Wiscasset, Maine 04578
(207) 882-7368

QUESTION PRESENTED

Was the Petitioner denied her right to a jury trial under the Constitution of the United State, Article Three, and Amendments Six and Seven?

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TO THE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
FOR THE STATE OF MAINE

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United States Constitution

Article 3, Section 2. 2,5,6

Amendment 6. 2,5,6

Amendment 7. 2,5,6

OTHERS

1990 Federal Rules of Civil Procedure (Maine)

Rule 38.b. 2,5,6
"Demand. In an action in the Superior Court, any party may demand a trial by jury of any issue triable of right by a jury by including a demand therefor in writing in the pretrial scheduling statement."

IN THE SUPREME COURT

OF THE UNITED STATES OF AMERICA

TERM, 1991

ELAINE E. GROVER —
PETITIONER

VS.

ROCHELEAU, FOURNIER AND LABEL, PA.
WILLIAM ROCHELEAU, JR. AND
PAUL FOURNIER —
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
FOR THE STATE OF MAINE

Petitioner, Elaine E. Grover, respectfully prays that a writ of certiorari issue to review the judgement and opinion of the Supreme Judicial Court sitting as the Law Court for the State of Maine supporting an Order for Summary Judgement without a jury trial as ordered.

OPINIONS BELOW

The opinion of the Supreme Judicial Court appears in Appendix L.

JURISDICTION

This Court's jurisdiction is invoked under Article 3, Section 2 of the Constitution of the United States, and Amendments Six and Seven to the Constitution of the United States, and under Rule 38 of the 1990 Federal Rules of Civil Procedure.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article Three, Section Two and Amendments Six and Seven of the Constitution of the United States.

STATEMENT OF THE CASE

On February 11, 1989, a Complaint and Summons was served against Petitioner in the District Court, District Eight, Division of Southern Androscoggin of Lewiston, Maine; the matter of Rocheleau et al. vs. Grover for

payment of disputed fees; and the original case (Criminal Action, Walter vs. Grover LIN 87-348) involving real estate in Wiscasset, Maine at 14 High Street in which petitioner was represented by Plaintiff.

On March 2, 1989, Motion by Defendant for enlargement of time for Defendant to file answer to Complain filed. March 6, 1989, Motion Granted. it is ordered that the Defendant shall have until April 14, 1989 to file and answer (Judge Beliveau).

On April 20, 1989, Defendant requesting that the case of Rocheleau et al. vs. Grover, Civil Action Docket No. 89-CV-131 be moved to Superior Court in Bangor, Maine, or another area, in order to assure a fair and impartial trial.

On April 20, 1989, Defendant's Notice of Removal filed.

On April 27, 1989, Motion for Change of Venue in CV-89-184 , Plaintiff William Rocheleau, Jr. et al to Superior Court in Bangor, Maine due to conflict of interest in the area, William Rocheleau, Jr. practices law in Androscoggin County.

On May 26, 1989, Defendant files Memorandum in Opposition and demand for jury trial.

On May 30, 1989, Defendant opposes the pretrial scheduling statement and writes letter of May 31, 1989, citing abuse of process.

On June 2, 1989, Defendant wrote protest to the Court regarding the way the Pretrial Scheduling Statement was served on Defendant. Mr. Peter Dublin, Plaintiff's Attorney, did not file on time. Defendant again demands jury trial.

June 20, 1989, Order filed for Jury Trial by Judge Delahanty II.

Expedited Pretrial Ordered filed, with Discovery to be completed by December 1, 1989. The case was ordered placed on the jury trial list 30 days after close of discovery.

This matter falls into three parts: the Defendant's right to self-representation; the matter of Rocheleau, Jr., et al. vs. Grover for payment of disputed fees; and the original case (Criminal Action Walter vs. Grover LIN 87-348) involving real estate in Wiscasset, Maine located at 14 High Street in which Defendant was represented by Plaintiff Rocheleau.

Judge Kermit Lipez, at the hearing held on Plaintiff's Motion for Summary Judgment on July 3, 1990 (Civil Action 89-184, Androscoggin County), refused to hear Defendant's arguments in the matter because Defendant was not represented by an attorney, even though all docket entries and Court records clearly show that Defendant is represented pro se.

Judge Lipez stated that he would not hear Petitioner's arguments because she was not represented by an attorney.

A witness was with Petitioner and heard what Judge Lipez said, Gail Peaslee Andretta.

Mr. William Rocheleau, Jr., was not present at this hearing of July 3, 1990, and Attorney Peter DeTroy withdrew from the case on June 12, 1990.

Plaintiff is not owed the sum of money claimed ($4,240.70) because Plaintiff failed in his obligations to Defendant while representing her in the case involving said property at 14 High Street, Wiscasset, Maine.

After having agreed to take the Defendant's case on January 4, 1985, Attorney William Rocheleau, Jr. failed to do appropriate research pertaining to the case, missed deadlines for filing dismissals, was not prepared for trial, failed to call witnesses and to use appropriate documents, and then failed further in his responsibilities by dropping Defendant's case eight days before the brief and appendix were due to be filed on December 8, 1987, leaving Defendant no time to find another attorney or to prepare the materials herself.

Court records and trial exhibits in Walter v. Grover have been altered.

On November 26, 1990, Defendant requested a hearing before the Law Court for oral argument.

On November 28, 1990 request for oral argument was denied by Chief Justice Vincent McKusick.

Decision of the Maine Supreme Judicial Court sitting as the Law Court was decided on January 18, 1991.

Defendant has never received the jury trial ordered by Justice Delahanty in the Expedited Pretrial order of June 20, 1989, and provided for under the United State Constitution, Article Three, Section Two, Amendments Six and Seven, and Rule 38 of the 1990 Federal Rules of Civil Procedure.

REASON FOR GRANTING THE WRIT

Certiorari should be granted because Petitioner has never had the jury trial order on June 20, 1989.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the matter of Rocheleau v. Grover, which would then lead to a review of the matter of Walter v. Grover.

Dated: March 8, 1991.

Respectfully submitted,

Elaine E. Grover

Elaine E. Grover, Petitioner, Pro Se

IN THE
SUPREME COURT OF THE UNITED STATES
_____ TERM, 1991

NO. _____

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
_____TERM, 1991

ELAINE E. GROVER —
PETITIONER

VS.

ROCHELEAU, FOURNIER AND LABEL, PA.
WILLIAM ROCHELEAU, JR. AND
PAUL FOURNIER —
RESPONDENT

PROOF OF SERVICE

I, Elaine E. Grover, do swear or declare that on this date, March 15, 1991, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached Petition for a Writ of Certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid:

The names and address of these served are as follows:
William Rocheleau, Jr.
Paul Fournier
Rocheleau, Fournier and Lebel, P.A.
65 East Avenue, P.O. Box 1918
Lewiston, Maine 04241-1918

Elaine E. Grover
Elaine E. Grover, Affiant

Subscribed and Sworn to Before Me this
15 day of March, 1991

Jill A. Cooney
Notary Public

State of Maine
Lincoln City

JILL A. COONEY
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES AUGUST 1, 1996

STATE OF MAINE

ANDROSCOGGIN, SS. SUPERIOR COURT
CV-89-184

WILLIAM ROCHELEAU, JR.
Plaintiff

vs. EXPEDITED PRETRIAL ORDER

ELAINE GROVER
Defendant

Pursuant to Rule 16(c)(1), M.R. Civ. P., the court has reviewed the pleadings and the Pretrial Scheduling Statement in this action. IT IS ORDERED that the case be placed on the expedited pretrial list, and that:

1. Discovery and Placement of Case on Trail List.

Discovery shall be completed by December 1, 1989, and the clerk shall place the action on the jury trial list 30 days after that date. Expert witnesses shall be designated by the parties sufficiently early within the discovery period so as to allow other parties time to take discovery and to designate expert witnesses of their own.

2. Report of Conference of Counsel.

Prior to the date fixed for the completion of discovery, counsel shall confer for the purpose of identifying witnesses, marking exhibits, setting for the issues and entering into stipulations. no more than 10 days after the date fixed for the completion of discovery, counsel for the plaintiff shall file a report of the conference with the court, which report shall include a list of witnesses, exhibits, issues and stipulations. It shall also indicate the respective estimates of counsel of the time required for trial and the latest date (not less than 14 day before trial) by

which names and addresses of newly discovered witnesses and copies of newly discovered exhibits shall be furnished to opposing counsel.

Any witnesses or exhibits not listed in the conference report may be excluded by the court if it appears that adverse parties would be prejudiced by calling of the witness or introduction of the exhibit, or that adverse parties have not had adequate notice and opportunity to discover and to prepare for the testimony of the witness or review the content of the exhibit.

3. Trial.

Counsel signing the report of conference of counsel shall be deemed to be trial counsel, unless the court is otherwise advised in said report. The legal and factual issues at trial shall be as stated on the pleadings unless shown to be different in the report of the conference.

4. Settlement.

The parties shall notify the court that the action has been settled at any time prior to the date on which the action is placed on the trial list. After that date, the action shall be considered fully prepared for trail.

5. Further Action.

(None)

6. Objections to Order.

Any part who objects to any of the terms of this order, or who objects to the placement of the action on the expedited trial list, shall file a motion to amend such terms, pursuant to Rule 7(b) of the MR.Civ.P., within 10 days of notice of this order.

ORDER: Pursuant to Rule 79 (a), M.R.Civ.P., the clerk is directed to make the following entry in the docket of this case:

"Expedited Pretrial Order filed. Discovery to be completed by December 1, 1989. Case ordered placed on the jury trial list 30 days after close of discovery. By Order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket."

s/ Delahanty, Justice, Superior Court

Dated: June 14, 1989

Date of Entry	William Rocheleau vs. Elaine Grover Docket No CV-89-184
June 23	Received 6-20-89
	Expedited Pretrial order, filed (Delahanty II, J.)
	Expedtied Pretrial order filed. Discovery to be completed by December 1, 1989. Case ordered placed on the jury trial list 30 days after close of discovery. by Order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket.
	Copies given in hand to Elaine Grover and Peter Dublin for William Rocheleau this day.

APPENDIX B

STATE OF MAINE

ANDROSCOGGIN, SS.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV – 89– 184

WILLIAM ROCHELEAU, JR.,

Plaintiff

V.

ELAINE GROVER,

Defendant

PLAINTIFF WILLIAM ROCHELEAU, JR'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO MAINE RULES OF CIVIL PROCEDURE 56B

NOW COMES the Plaintiff, by and through counsel, and moves this Court for summary judgment on Defendant's counterclaim since there is no genuine issue of material fact and Plaintiff is entitled to a judgment as a matter of law.

Plaintiff further moves this Court for summary judgment on Plaintiff's Complaint against the Defendant since there is no genuine issue of material fact and Plaintiff is entitled to a judgment as a matter of law.

In support of his motion, Plaintiff relies on the pleadings, the attached Affidavit of William Rocheleau, Jr., the attached exhibits, and the accompanying Memorandum of Law.

WHEREFORE, the Plaintiff requests that summary judgment be granted in his favor as to the Defendant's counterclaim and that summary judgment be granted in his favor and against the Defendant in the amount of Four Thousand

Two Hundred and Forty Dollars and Seventy-two Cents ($4,240.72) plus interest, costs, and such other and further relief as the Court deems just and proper.

Dated this 17th day of May, 1990.

NORMAN, HANSON& DeTROY

s/ Theodore H. Kirchner

s/ David P. Very

Attorneys for the Plaintiff

William Rocheleau, Jr.

NORMAN, HANSON & DeTROY

P.O. Box 4600 DTS

Portland, Maine 04112

(207) 774-7000

STATE OF MAINE SUPERIOR COURT

ANDROSCOGGIN, SS. CIVIL ACTION

DOCKET NO. CV-89-184

Rocheleau, Fournier & Lebel, P.A.
William Rocheleau, Jr. and
Paul Fournier

Plaintiffs

vs. Answer to Plaintiff's Request for Hearing

Elaine E. Grover

Defendant

The Defendant demands a jury trial on all issues.

Expedited Pretrial Order was filed June 20, 1989, Discovery to be completed by December 1, 1989. Case Ordered placed on the jury trial list 30 days after close of Discovery.

Dated: June 18, 1990.

s/ Elaine E. Grover

APPENDIX D

STATE OF MAINE SUPERIOR COURT

ANDROSCOGGIN, SS. CIVIL ACTION

Docket No. CV-89-184

Rocheleau, Fournier & Label, P.A.

William Rocheleau, Jr. and

Paul Fournier

Plaintiffs

vs. Memorandum in Opposition to

Elaine E. Grover the Motion for Hearing

Defendant

The Defendant demands a jury trial on all issues, pursuant to Maine Rules of Court, State and Federal Rule 38B and Demand for Jury Trial.

Defendant will appear July 3, 1990 for hearing.

Dated: June 25, 1990. s/ Elaine E. Grover

APPENDIX E

STATE OF MAINE SUPERIOR COURT

ANDROSCOGGIN, SS. CIVIL ACTION

DOCKET NO. CV-89-184

William Rocheleau, Jr.,

Plaintiff

v. Order on Plaintiff's Motion

Elaine Grover, for Summary Judgment

Defendant

After hearing [*(in Judge's handwriting)* for the reasons stated on the record], it is hereby ORDERED that judgment be entered for the Plaintiff on his Complaint for $4,240.72, plus interest and costs.

Judgment is ordered for the Plaintiff on his Motion for summary Judgment on Defendant's Counterclaim. Defendant's Counterclaim is dismissed with prejudice.

The Clerk is directed forthwith to enter judgment for the Plaintiff on his Complaint and against the Defendant on her counterclaim.

Dated: 7/8/90

s/ Kermit V. Lipez, Justice, Superior Court

APPENDIX F

RR Box 937

Wiscasset, Maine 04578

November 26, 1990

James C. Chute

Clerk of the Law Court

Supreme Judicial Court

P.O. Box 368

Portland, Maine 04112

Re: William Rocheleau, Jr. et al. v. Elaine Grover

Law Docket No. AND-90-329

Dear Mr. Chute:

I wish to inform the Court that I have reviewed Plaintiffs'/Appellees' Brief in this matter and have found no new issues upon which to file a Reply Brief. I apologize for my error contained in the Argument on page 3 of my Brief: I intended to refer to Rocheleau et. al. v. Grover. I would like to reiterate my request for a hearing before the Court in Oral Argument. It is not my intention to waste the Court's time; however, I do request a hearing before the Court.

Sincerely,

s/ Elaine E. Grover

Elaine E. Grover, Defendant

cc: Theodore Kirchner

Norman, Hanson & DeTroy

APPENDIX G

STATE OF MAINE

ANDROSCOGGIN, SS

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. AND-90-329

WILLIAM ROCHELEAU, JR., et al.

vs.

ELAINE GROVER

ORDER

Upon appellant's request for oral argument,

It is ORDERED that the request be, and it hereby is, DENIED.

Dated: November 28, 1990

For the Court,

s/ Vincent McKusick

Chief Justice

RR3 Box 937

Wiscasset, Maine 04578

APPENDIX H

November 30, 1990

James C. Chute

Clerk of the Law Court

Supreme Judicial Court

P.O. Box 368

Portland, Maine 04112

Re: William Rocheleau, Jr. et al. v. Elaine Grover

Law Docket No. AND-90-329

Dear Mr. Chute:

I am in receipt of the notice of Procedural Order with regard to the above case set for briefs, without oral argument.

I demand to be heard in oral argument before the Court.

I am submitting my demand within the 7 day time period required and request full hearing before the court because I feel that my rights to a fair hearing have been denied.

Sincerely,

s/Elaine E. Grover

APPENDIX I

STATE OF MAINE

ANDROSCOGGIN, SS.

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Docket No. And-90-329

WILLIAM ROCHELEAU, Jr. et al.

vs.

ELAINE E. GROVER

ORDER

Upon appellant's "demand" for oral argument,

It is ORDERED that the "demand" be, and it hereby is, DENIED.

Dated: December 3, 1990

For the Court

s/ Vincent L. McKusick

Chief Justice

APPENDIX J

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-89-184
Law Court No. AND-90-329

Rocheleau, Fournier and Lebel, P.A.
William Rocheleau, Jr. and
Paul Fournier

PLAINTIFFS

VS.

Elaine E. Grover

DEFENDANT

BRIEF OF APPELLANT

Submitted by:

Elaine E. Grover
R.R. #3, Box 937
Wiscasset, Maine 04578
(207) 882-7368

APPENDIX K

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STATEMENT OF FACTS

This matter falls into three parts: the Defendant's right to self-representation; the matter of Rocheleau vs. Grover for payment of disputed fees; and the original case (Criminal Action, Walter v. Grover LIN-87-348) involving real estate in Wiscasset, Maine located at 14 High Street in which Defendant was represented by Plaintiff.

Judge J. Lipez, at the hearing held on Plaintiff's Motion for Summary Judgment on July 6, 1990 (Civil Action 89-184, Androscoggin County), refused to hear Defendant's arguments in the matter because Defendant was not represented by an attorney, even though all docket entries and Court records clearly show that Defendant is represented *pro se*.

Judge Lipez stated that he would not hear her arguments because she was not represented by an attorney.

Plaintiff is not owed the sum of money claimed ($4,240.70) because Plaintiff failed in his obligations to Defendant while representing her in the case involving said property at 14 High Street, Wiscasset, Maine.

After having agreed to take the Defendant's case on January 4, 1985, Attorney William Rocheleau, Jr. failed to do appropriate research pertaining to the case, missed deadlines for filing dismissals, was not prepared for trial, failed to call witnesses and to use appropriate documents prepared for the trial, and then failed further in his responsibilities by dropping Defendant's case eight days before the

brief and appendix were due to be filed on December 8, 1987, leaving her no time to find another attorney or prepare the materials. Court records and trial exhibits in Walter V. Grover have been altered.

Defendant has never received the jury trial ordered by Justice Delahanty II in the Expedited Pretrial Order of June 20, 1989.

STATEMENT OF ISSUES ON APPEAL

The issues on appeal in the matter of Rocheleau, et al. v. Grover are the right of Defendant to self-representation; the ruling of Judge Lipez was unfair and biased; and the right of Defendant to a jury trial previously ordered.

ARGUMENT

At no time was the Defendant told by any officer of the court that there was any rule of court that did not allow her to represent herself, nor has Defendant been able to find any such reference in Maine Rules of Court (State and Federal) 1990. Therefore, Defendant should be allowed to represent herself in matters before any Maine court.

Judge J. Lipez, at the hearing on Plaintiff's Motion for Summary Judgment showed bias when he refused to hear what Defendant had to say because she was not represented by an attorney. All documents in the case to the date of the hearing, July 6, 1990, clearly showed that the Defendant was indeed representing herself. Judge Lipez should have been fully aware that Defendant was representing herself. This court was biased against Defendant and thus rendered an unfair judgment and disregarded the rights normally afforded to Defendants.

To date, in the matter of Walter v. Grover, Defendant has been denied the jury trial ordered by Justice Delahanty II in the Expedited Pretrial Order dated June 20, 1989. The trial was ordered and it has not taken place.

At the very least, it is argued that the trial must take place as ordered, that the Order on Plaintiff's Motion for Summary Judgment be set aside, that the Dismissal of Defendant's Counterclaim be set aside, and that Defendant be allowed to represent herself and be fairly treated under the Maine Rules of Court.

Defendant reiterates demand for jury trial as ordered by Justice J. Delahanty II in Expedited Pretrial Order dated June 20, 1989.

STATE OF MAINE

ANDROSCOGGIN, SS.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV.-89-184

Law Docket No. AND-90-329

ROCHELEAU, FOURNIER, AND LEBEL, P.A.,

WILLIAM ROCHELEAU, JR. AND

PAUL FOURNIER,

Plaintiffs

vs.

ELAINE E. GROVER,

Defendant

Motion for Summary Judgment

BEFORE:

HONORABLE KERMIT V. LIPEZ, JUSTICE OF THE SUPERIOR COURT.

Androscoggin County Courthouse

2 Turner Street

Auburn, Maine

July 3, 1990

1:00 p.m.

APPEARANCES:

For the Plaintiffs: Peter J. DeTroy III, Esq.

For the Defendant: pro se

Penny L. Philbrick

APPENDIX L

Official Court Reporter

Transcript of Proceedings

(This case came on for haring before the Honorable Kermit V. Lipez, Justice, at the Androscoggin County Courthouse, Auburn, Maine, on Tuesday, July 3, 1990, commencing at 1:00 p.m.)

THE COURT: Next matter is Docket No. 89-184, case of Rocheleau versus Grover. This matter will be made — this matter will be on the record entirely.

MR. ROCHELEAU: Morning, Your Honor.

THE COURT: Morning, mr. Rocheleau. Ask those present to please identify themselves for the record.

MR. DETROY: Yes, Peter DeTroy, attorney for William Rocheleau.

MS. GROVER: Elaine Grover, pro se Defendant and Gail Peaslee Andra (ph).

THE COURT: Sorry?

MS. GROVER: Gail Peaslee Andra. She's as a witness.

THE COURT: Let me just indicate at the outset that I have before me Plaintiff's motion for summary judgment on both the complaint and counterclaim.

My understanding is that the Plaintiff is suing for legal fees arising out of previous representation of Mrs. Grover.

In response to that lawsuit, there has been a counterclaim filed for malpractice.

Mr. DeTroy, I do not find in this file any affidavits that have been filed in opposition to the motion for summary judgment. Is that your understanding of the state of the record?

MR. DETROY: There are no affidavits in opposition?

THE COURT: That's correct.

MR. DETROY: That's correct, Your Honor.

THE COURT: Mrs. Grover, could I ask you, please, I find in this file a — a large pile of documents that were received in the Clerk's office on June the 13th. Would you please indicate to me what the — the purpose of these filings are.

MS. GROVER: I have a — I would like to have a jury trial. That's what I'm here for today. That's what I want and that's what I'm demanding because there are so many papers.

This has been a bad case all the way through and I received papers from Peter DeTroy and they're not signed, unsigned, and I have sent in exhibits of both attorneys William Rocheleau, Paul Fournier, and Guy Seaberg.

This is a conflict of interest because they were in the same court and now they are together working so that is a conflict of interest and I feel that I am right and I'm not going to give up.

I had criminal charges put on me in '85. Now, Mr. Rocheleau should have had done his work. He didn't. He — he said he didn't have criminal charges; but I have the paperwork right here to prove that it was criminal in '85, and I also have more paperwork.

This here they have as Defendants Elaine Grover, Ernest Drover, Jr., Gail Peaslee, and Freda Hussey. At the trial, Gail Peaslee was never given a subpoena and she was never —

THE COURT: Excuse me for interrupting. I probably started this a little backwards. Let me do this: Let me call upon Mr. DeTroy. He's filed these pleadings. Why don't you listed to what he has to say in support of his position.

He's the moving party and then I think that will give you a pretty clear view of what the — the legal posture of this case is at this point and then you can response to that so.

MS. GROVER: Excuse me a minute.

THE COURT: I don't mean to be rude but since Mr. DeTroy's the moving party, he usually does get to go first.

MS. GROVER: Could I ask you another question? Peter DeTroy has another case against me, so I feel this is a conflict of interest.

THE COURT: Well, Mr. DeTroy can respond to that as well. I'm not sure what that refers to.

Mr. DeTroy, why don't you go ahead.

MR. DETROY: I'm at a loss also. I never heard of Mrs. Grover before. Maybe in an earlier time. Peter DeTroy on behalf of the Plaintiff, William Rocheleau, Jr.

Mr. Rocheleau filed a complaint in '89 for legal fees that were incurred by Elaine Grover pursuant to Mr. Rocheleau's representation of her in two separate matters.

One involved a potential human rights complaint in connection with Mrs. Grover's employment, and the other was in connection with his representation of her in a superior court trial that involved a Zoya Walter.

The counterclaim of Mrs. Grover relates solely to alleged malpractice arising out of Mr. Rocheleau's representation of her interest at the Zoya Walter trial.

The focus of our summary judgment motion is — is fairly straightforward. It's, number 1, based, obviously, on all the pleadings and the affidavit we've submitted.

The pleadings make it clear that legal fees in a specific amount were incurred. That has really not been disputed.

I think a fair reading of the pleadings, even if given a certain amount of liberality accounting for the ambiguities in Miss Grover's response, makes it clear, really, it's not so much a question of whether the work was don but, frankly, whether the work was done in a manner she thinks is appropriate.

This is a legal malpractice case that seems to focus, as we indicated in the memorandum, basically on alleged failure to properly prepare or to introduce certain testimony at trial.

That kind is malpractice case is uniquely – or perhaps uniquely is the inappropriate work – but requires as a condition, I think, that there be some sort of expert basis to establish that Mr. Rocheleau's conduct as an attorney fell below the standard.

Malpractice is not self-proving, I would think, except to use perhaps an analogy of medical malpractice cases where it's so clear, for instance, somebody missing a statute of limitations, somebody palpably failing to conduct himself in a way anybody would expect, lay person as well as an expert witness.

So essentially, our motion for summary judgment is based on two things; number 1, there really has been no opposition whatsoever to the fact that these fees were incurred and that there are — that they are reasonable on their face and for that reason, Plaintiff should obtain summary judgment simply on his complaint for $4,240.74; secondly, that the Defendant's counterclaim, while rather diverse and scattered, to put it mildly, really focuses on Ms. Grover's feeling that the should have won the case, that the case below was wrongly decided, and that if certain witnesses had been presented or certain testimony has been presented in a certain way, that she might have — she might have prevailed.

I suggest whatever complaints are, they clearly do not rise to the level of the type of palpable malpractice that allows it to proceed with or without an expert and there is simply no expert here and for that reason, we should obtain summary judgment on our complaint.

THE COURT: Just to clarify something on the record, Mr. DeTroy, you have previously filed a motion to withdraw. Mr. Kirchner entered an appearance. You're in the same firm.

MR. DETROY: I don't know why we go through those things. Just to make sure the Clerk gets to the right person. Obvious Mr. Kirchner and I are partners.

THE COURT: Thank you.

MS. GROVER: I object to that. I have got papers here that are illegal. They have been altered by the courts and by Mr. Rocheleau and I just feel it has been very unfair case and the judge didn't judge according to law in which he should have and in the beginning, I had no fair trial at all and I just want a jury trial, my day in court and —

THE COURT: What it is you want a jury trial on?

MS. GROVER: Pardon?

THE COURT: What is it you want a jury trial on?

MS. GROVER: Well, I have right here I hired Mr. Rocheleau on January 4 of '85; and my complaint against Mr. Rocheleau consist of the following: Attorney William Rocheleau, Jr. was unprepared for trial and missed deadlines for filing dismissals.

Rocheleau also failed to do appropriate research or would would not have the criminal charges on me in '85. He also failed to call witnesses that should have been called.

Now, I have my daughter. She should have been called. She should have got a subpoena. he charges her for it and she never received it.

He didn't bring in the appropriate people for the trial and he, Attorney Rocheleau, did not fulfill his obligations to me as he dropped me as a client on November 23 of 1987 with only 8 days remaining before the brief and appendix were to be filed in court and then he told me, Attorney Rocheleau tried to talk me out of the appeal on November 23, 1987.

I said that I would not have fraud charges filed against me when they were not true. mr. Rocheleau said he could get a frivolous charge. That was when I found out the brief and appendix had not been filed with the court as they had not been done.

The due date was only eight days. In that time, I asked five attorneys to take the case and they refused.

Mr. Rocheleau telephoned me on November 30 of '87. In his follow-up letter is attached. mr. Rocheleau received a letter about February 9 of 1987 indicating that Mrs. Zoya Walter had dismissed her attorney Guy Seaberg.

She was instructed not to do anything further with respect to the prosecution of the case; but Mr. Seaberg said, I'm going to attempt to secure independent protection for her apart from any that I can now provide through this section.

The — Mr. Rocheleau should have filed a dismissal for cause of action. Dismissals were not filed.

Legal malpractice is a professional improper conduct in the performance of duties done either intentionally or though carelessness or ignorance.

The term is commonly applied to lawyer or public officer to denote the negligent or unskillful performance of duties resulting from such person, professional duties.

Mr. Rocheleau made that statement to my husband, Ernest Grover, Jr., and myself there was no case. All proof is here in the deed.

I have paid the taxes and insurance on the property as well. Plaintiff, Zoya Walter, telephone Ernest Grover, Jr. on April 23, 1987 and made this statement: My lawyer is better than Elaine's.

At the time, I asked her why she had lied. She replied, That was they only way to get the house back.

Attorney Rocheleau did not show me or send an itemized statement for services I requested. I received no bill until the conclusion. I did not know what was going on.

When I asked Mr. Rocheleau why the case had been taken from a civil action to a criminal action, he could not give the a reason.

The trial transcript sent to the Law Court has Superior Court, Criminal Action, Docket No. LIN-87-348. The table of contents is missing.

Court records and trial exhibits had been altered and shows errors by mr. Rocheleau.

The case of Walter versus Grover should have been dismissed long before it went to appeal. The case was a non-jury case, yet is was marked a jury case.

Mr. Rocheleau should have noticed the error. The error. Mr. Rocheleau has listed as Defendant a witness, Dennis Grover. To my knowledge, there is no such person.

Mr. Rocheleau has report of conference of counsel Defendant witnesses Gail Peaslee and Freda Hussey, who were not at the trial. Ms. Eunice Adams should have been called as a witness; and I want a trial, a jury trial. I am demanding it.

THE COURT: Mrs. Grover, I'm going to — to now try to explain to you what my ruling and and this may be difficult for you to understand because I realize that you're representing yourself and you're not trained in law.

MS. GROVER: Well, the issue —

THE COURT: Let me finish, madam, please. I've given you an opportunity to let you set forth you position. I'd like to respond to your position and Mr. DeTroy's.

The fact is that although you represent yourself, I have to apply our legal standards to your case just as I apply it to the Plaintiffs" case; and the fact that you're representing yourself does not mean that I can apply a lesser legal standard to your case or how you handle your case than I would to the Plaintiffs' case.

I'll make every effort to explain to you what's happening here and why it's happening, but I still have to apply to your case the same legal standards.

Now, I'm going to grant the Plaintiffs' request for summary judgment and I am going to grant their request for summary judgment on the counterclaim and to put it most simply, Mrs. Grover, that means that in this case, the Plaintiff is going to obtain the judgment that they're looking for at this time.

I do that for the following reasons: I think Mr. DeTroy is correct on the state of this record that there is no denial that they money that they have billed you for has not been paid.

I believe the record supports the proposition that the legal fees sought is a reasonable legal fee.

With respect to your counterclaim, I agree with Mr. DeTroy's position that that kind of a claim could not survive a motion for a directed verdict at trial without the benefit of expert testimony from another lawyer saying that Mr. Rocheleau, for all the reasons that you have just described, did not meet the professional standards that one would expect of an attorney in representing you.

You have not indicated that you have any such expert witness. You have not filed any affidavit of an expert witness putting in issue a factual basis the performance of Mr. Rocheleau.

You would have to be able to do that in order to go forward with your claim at trial.

I have to analyze your position at this time as I would analyze it at trial. if after you put forward your — if after you had completed your case against mr. Rocheleau, and the other side said, Judge, this case should not go any further because the — the moving party — the counterclaim Plaintiff, which would be you — the counterclaim Defendant, which would be you, you just haven't met the burden that you have to meet in order to allow your case to go forward, I would have to grant the motion on the state of the record.

Therefore, with respect to the counterclaim, I have got to grant the motion for summary judgment and, basically, for you — for you, Mrs. Grover, that means there's a final judgment in this case and you — you can appeal that.

MS. GROVER: Yes, I would like to appeal it.

THE COURT: And you have that right; and I want you to know that everything that we have said here today, that you have said, that Mr. DeTroy has

said, and that I have said in making this ruling, that's all a matter of records so that is — that is available for purposes of appeal.

I am going to ask Mr. DeTroy – perhaps he's already done that – to prepare an order reflecting this. is that already in the file?

MR. DETROY: I don't know if it is, Your Honor. I don't believe — as I went though my file, I didn't see it there; but I'll have it to the Court by the end of this week.

THE COURT: All right. That's fine. And I — when I enter that order, Mrs. Grover, that will be a final judgment; and I will have disposed of all of the claims in this case.

MS. GROVER: I object to that. Really, I have had —

THE COURT: Sure.

MS. GROVER: — investigator look at it and he said no lawyer would touch it because there has been so much done wrong and which I am going to appeal this and do want my day in court, no question.

THE COURT: I understand your position, Mrs. Grover, and you are well within your rights to do that and you should simply take note of the fact that the appeal period will begin to run from the time that I — that judgment is entered so —

MS. GROVER: So how many days will I have?

THE COURT: I'm not going to give you any legal advice at all, ma'am. You should just check. Check the books and you can — you can go from there. All right.

MS. GROVER: Well, I just think this is really — I really object to the whole thing. I don't feel I've got a fair trial here.

Even — you wouldn't even look at my paperwork here. Zoya Walter will be a witness for me. She'll be the star witness.

They've already taken and probated her will, and she's not dead yet and I have paper here that she will — the house is mine.

There's no question. I have legal title to that house. There's no question.

THE COURT: All right, ma'am. Thank you very much.

(The proceeding was concluded at 11:39 a.m.)

* * * * *

CERTIFICATE

I hereby certify that the foregoing is a correct transcript of my stenographic notes of the testimony and proceedings in the hearing of the above-entitled cause.

Dated this 1st day of October, 1990.

s/Penny L. Philbrick

Official Court Reporter

STATE OF MAINE
CUMBERLAND, SS.

Law Court
Civil Action
Docket No. Cv-89-184
Law Docket No. AND-90-329

Rocheleau, Fournier, and Lebel, P.A.,
William Rocheleau, Jr. and
Paul Fournier,

Plaintiffs

vs.

Elaine E. Grover,

Defendant

Corrections to Transcript of Hearing

Androscoggin County Superior Court

July 3, 1990

Page	Line	From:	To:	Reason:
1	18	1:00 p.m.	11:39 a.m.	Wrong time
2	2	This case on	This hearing on	Wrong word
2	5	1:00 p.m.	11:39 a.m.	Wrong time
2	7	This matter will be		Omit, not said
2	7	made this matter		Omit, not said
2	8	will be on the record entirely		Omit, not said
2	9	Mr. Rocheleau: Morning, Your Honor		Mr. William Rocheleau, Jr. Not at hearing was not present at this hearing
2	10	The Court: Morning, Mr. Rocheleau ...		Rocheleau not at this hearing
2	12-13	Mr. DeTroy: Yes, Peter DeTroy, attorney for William Rocheleau, Jr.		Attorney Peter DeTroy withdrew from case June 12, 1990.

2	14	pro se Defendant	Judge refused to hear Defendant's case because Defendant was not represented by an attorney	Judge refused to hear Elaine Grover pro se
2	15	Gail Peaslee Andra (Ph)	Gail Peaslee Andretta	Wrong name
2	17	Andra	Andretta	Wrong name
2	17	as		Omit, not said
2	19	just		Omit, not said
2	19	at		Omit, not said
2	21	both		Omit, not said
2	21	complaint and		Omit, not said
3	4-5	Is that your understanding of the state of the record?		Omit, not said
3	8	The Court: That's correct		Omit, not said
3	9	Mr. DeTroy: That's correct, Your Honor		Omit, not said
3	11	a --		Omit not said
3	13	indicate	explain	Wrong word
3	15	I have a		Omit, not said
3	17	because there		Omit, not said
3	18	papers	issues	Wrong word
3	19-20	all the way through and they are not signed		Omit, not said
3	21	both		Omit, not said
3	25	feel	know	Wrong word
4	17	the --		Omit. not said
4	18	posture of this		Omit, not said
4	20	Mrs. Grover:	Excuse me a minute.	Omit, not said
4	25	feel	know	Wrong word

6	4	Miss	Mrs.	Wrong word
6	7	thinks	know	Wrong word
6	11	certain		Omit, not said
7	6	feeling	know	Wrong word
8	1	here		Omit, not said
8	1	They Documents		Wrong word
8	2	by		Omit, not said
8	2	just feel it has	I know the case	Wrong wording
8	3	been very	has been unfair	Wrong wording
8	3-5	case and the.. I had no fair trial at all and		Judge Roland Cole didn't use good judgment and didn't judge according to law. Judge Roland Cole knew exhibits had been altered.
8	5	just want	demand	Wrong word
8	7	The Court: What is it you want a jury trial		Omit, not said
8	8	on		Omit, not said
8	9	Ms. Grover: Pardon.		Omit, not said
8	12	Well, I have right here		Omit, not said
8	13	Mr. Rocheleau	Attorney William Rocheleau, Jr. on January 4, 1985 to defend me concerning a complaint that had been filed against me. My complaint	
8	17		Attorney	
8	17	also...research		Omit, not said

8	18	or I would not have the criminal charges...		Omit, not said
8	19	He	Attorney Rocheleau	Wrong wording
8	19	Also		Omit, not said
8	19-20	that should have been. . .called		Omit, not said
8	21-23	Now, I have. . .received it.	Attorney Rocheleau failed to use a deposition of the Plaintiff in the trail, which deposition would have described fully the intentions of the Plaintiff with regard to my possession of the real estate more particularly describe in Book 1152, Page 9 at the Lincoln County Registryof Deeds.	Wrong wording
8	24-25	He didn't bring in . . . and he . . .		Omit, not said
9	3-4	and then he told me		Omit, not said
9	8	was is		Wrong word
9	9	the that		Wrong word
9	11	eight days .	away.	Insert word
9	12	they was		Wrong word
9	13	In and		Wrong word
9	15	...about on or		Insert words
9	15	of		Omit, not said
9	19	the		Omit, not said
9	19	Mr. Seaberg	I	Wrong word
9	20	said		Omit, not said
9	22	section action		Wrong word
9	23	The		Omit, not said
9	24	...Dismissals	The	Insert word
9	25	professional	professional's	Wrong word

10	3	applied to ...lawyer	a	Insert word
10	5	person,	person's	Wrong wording
10	8	and myself...there	that	Insert word
10	10	the		Omit, not said
10	12	this	the	Wrong word
10	13	Elaine's...	lawyer.	Insert word
10	14	the	that	Wrong word
10	14	lied....She	and she	Insert word
10	15	That . . .was	it was	Insert word
10	17	services	service as	Wrong wording
10	20	had	has	Wrong word
10	22	could	would	Wrong word
10	25	was	is	Wrong word
11	5	marked ... a jury	marked as a jury	Insert word
11	7	Defendant a witness	Defendant's witness	Wrong wording
11	8	...Dennis	a Dennis	Insert word
11	11	Ms.	Mrs.	Wrong word
11	12	and		Omit, not said
11	12	trial		Omit, not said
11	13	it.	a jury trial.	Wrong wording.

Dated October 11, 1990.

Respectfully submitted:

s/Elaine E. Grover
Elaine Grover, Pro Se

CERTIFICATE OF SERVICE

I, Elaine E. Grover, hereby certify that I have caused two copies of the within Brief of Appellant to be served on Rocheleau, Fournier and Lebel, P.A., William Rocheleau, Jr. and Paul Fournier by mailing said copies to them addressed as follows:

William Rocheleau, Jr.
Paul Fournier
Rocheleau, Fournier and Lebel, P.A.
65 East Avenue
P.O. Box 1918
Lewiston, Maine 04241-1918

On this 2nd day of November, 1990, by United States Postal Service, postage paid.

Elaine E. Grover

Elaine E. Grover
R.R. #3, Box 937
Wiscasset, Maine 04578

MAINE SUPREME

JUDICIAL COURT

Reporter of Decisions

Decision No. 5677

Law Docket No. AND-90-329

WILLIAM ROCHELEAU, JR.

v.

ELAINE E. GROVER

Submitted on briefs January 17, 1991

Decided January 18, 1991

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, COLLINS, and BRODY, JJ.

Contrary to the contentions of the defendant, Elaine E. Grover, the summary judgment in favor of the plaintiff entered in the Superior Court (Androscoggin County, Lipez, J.) was not the result of a denial of self-representation or unfair bias on the part of the court and did not improperly supersede a prior pretrial order.

The entry is:

Judgment affirmed.

All concurring.

Attorney for the Plaintiff:
Peter J. DeTroy, Esq.
NORMAN, HANSON & DETROY
P.O. Box 4600 DTS
Portland, Maine 04112

For the Defendant:
Elaine Grover, pro se
RR #3 Box 937
Wiscasset, Maine 04678

APPENDIX M

Zoya WALTER,

v.

Elaine GROVER

Supreme Judicial Court of Maine.

Argued March 18, 1988.

Decided April 15, 1988.

Plaintiff, who gave defendant executed deed, brought action seeking legal and equitable relief alleging that there was no legal delivery of deed. The Superior Court, Lincoln county, found that plaintiff did not intend to deliver deed to defendant. Defendant appealed. The Supreme Judicial Court, Clifford, Jr., held that evidence supported trial court's determination that plaintiff did not intend to vest title to property in defendant, and thus, there was no valid conveyance of title.

Affirmed.

1. Deeds 54

A deed must be delivered in order for a conveyance of title to occur.

2. Deeds 56(1)

Legal delivery of deed requires that grantor transfer deed to or for benefit of grantee with intent to vest title in grantee.

3. Deeds 66

Grantor's intention with respect to deed is a question of fact to be determined from his or her words and actions. Rules Civ.Proc., Rule 52(a).

4. Deeds 208 (3,4)

Evidence supported trial court's determination that plaintiff did not intend to vest title to property in defendant when plaintiff gave defendant executed deed,m and thus, there was no valid conveyance of title; a few days before plaintiff gave deed to defendant, plaintiff had executed will by which she devised property to the defendant, plaintiff executed deed at defendant's insistence under misapprehension that both deed and will would be required to effect transfer of property upon her death, and plaintiff declined to record deed herself when she learned that recording would effect immediate transfer of property.

Guy P. Seaberg (orally), Damariscotta, for plaintiff.

Daniel L. Peabody (orally), Thompson & Peabody, Naples, for defendant.

Before McKUSICK, C.J., and NICHOLS, WATHEN, GLASSMAN, SCOLNIK and CLIFFORD, JJ.

CLIFFORD, Justice.

Elaine Grover, the defendant, the grantee named in a deed purporting to convey the Wiscasset residence of Zoya Walter, the plaintiff, appeals from a judgment of the Superior Court, Lincoln County, in favor of Walter on Count I of her complaint.[1] In its decision, the court determined that the deed, which Grover had recorded in the Registry of Deeds, had not been legally delivered to Grover and

---

[1] Walter brought a four-count complaint against Grover seeking legal and equitable relief. Count I alleged that there was no legal delivery of the deed and fraud. Count II was a claim for conversion. Count III alleged intentional infliction of emotional distress, and Count IV alleged undue influence. The court found for Walter on Count I and for Grover on Counts II, III, and IV.

so did not effectuate a transfer of title to her. Grover's sole contention on appeal is that the evidence is insufficient to support the judgment. Because the trial court's finding that Walter did not intend to deliver the deed to Grover is supported by credible evidence in the record, we affirm.

[1-3] A deed must be delivered in order for a conveyance of title to occur. *Paine v. Paine*, 458 A.2d 420,421 (Me. 1983). "[T]he term 'delivery' describes that point in time at which the parties manifest their intention to make the [deed] . . . operative and effective . . ." *Id.* Legal delivery of a deed requires that the grantor transfer the deed to or for the benefit of the grantee with the intent to vest that title in the grantee. *St. Pierre v. Grondin*, 513 A.2d 1368, 1369 (Me. 1986). The grantor's intention is a question of fact to be determined from his or her words and actions. *Id.* That determination of fact will be upheld on appeal unless it is clearly erroneous. *Harmon v. Emerson*, 425 A.2d 978, 982 (Me. 1981); M.R. Civ.P. 52(a). We will not disturb the trial court's factfinding "that is supported by *any* credible evidence if the [factfinder] could rationally reach the result it did." *True v. Ladner*, 513 A.2d 257, 265 (Me. 1986) (emphasis added).

[4] The record before us contains ample credible evidence to support the Superior Court's determination that Zoya Walter did not intend to vest title in Elaine Grover when she gave her the executed deed. Just a few days before she gave the deed to Grover, Walter had executed a will by which she devised her Wiscasset residence to Grover. Walter testified that the executed the deed to the same property at Grover's insistence, under the misapprehension that both the deed and the will would be required to effect a transfer of the property upon her death.

Walter declined to record the deed herself when she learned at the Registry of Deeds that recording would effect an immediate transfer of her property. According to her testimony, Walter decided instead to give the executed deed to Grover for safekeeping and instructed the defendant not to record it. Grover recorded the deed later that day despite the plaintiff's instructions. This recording of the deed did not conclusively establish delivery of the deed, nor did it eliminate the need for proof that the deed had, in fact, been delivered. *Hood v. Hood,* 384 A.2d 706, 707-08 (Me.1978).

The entry is:

Judgment affirmed.

All concurring.

"Jury Trial" as Defined by Black's Law Dictionary,

Sixth Edition, West Publishing Company, 1990

ISBN 0-314-77165-4

Jury trial. Trial of matter or cause before jury as opposed to trial before judge. Such right is guaranteed with respect to crominal cases by Art. III, Sec. 2, cl. 3 of U.S. Const., and with respect to "suits at common law, where the value in controversy shall exceed twenty dollars" by the Seventh Amendment. Such right is also preserved by rule of court (*e.g.* Fed.R.Civil P. 38) and by the Fifth Amendment which provides *inter alia* for indictment by grand jury, and the Sixth Amendment which contains further specifications respecting jury trial in criminal cases. In addition, state consstitutions provide for right to jury trial and the Supreme Court has held that the Fourteenth Amendment guarantees a right of jury trial in all state criminal cases which – were they to be tried in federal court – would come within the Sixth Amendment's guarantee. Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491.

The right to "jury trial" of controverted issues implies a trial by an impartial and qualified jury. Alexander v. R.D. Crier & Sons Co., 181 Md. 415, 30 A.2d 757, 759.

ARTICLE III

Section 2. [1] The judicial Power shall extend all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and the Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of Admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

AMENDMENT VI [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of

War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VII [1791]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(2)

No. 90-1479

FILED
APR 18 1991
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1991

ELAINE E. GROVER,

PETITIONER

V.

ROCHELEAU, FOURNIER & LEBEL, P.A.
WILLIAM ROCHELEAU, JR. &
PAUL FOURNIER,

RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MAINE SUPREME JUDICIAL COURT

Counsel for Respondents
Theodore H. Kirchner, Esq.
NORMAN, HANSON & DeTROY
415 Congress Street
P.O. Box 4600
Portland, ME 04112
(207) 774-7000

BEST AVAILABLE COPY

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ARGUMENT

Petitioner asserts that the question presented for review is whether she was denied her right to a jury trial pursuant to the Constitution of the United States.

Petitioner's entire argument consists of the single sentence: "Certiorari should be granted because Petitioner has never had the jury trial order on June 20, 1989." (Petition at 7).

The referenced Order is reproduced in this Brief, as Attachment A, for the Court's convenience. The Order, entitled "Expedited Pretrial Order", is a form order issued by the Court pursuant to Maine Rule of Civil Procedure 16(c)(1), which essentially sets the timetable for prosecution of civil actions in Maine, other than those deemed to require a more formal pre-trial conference procedure.

Plaintiffs/Respondents moved for summary judgment on the Complaint and on the Counter-claim. After hearing, summary judgment was granted for Plaintiffs/Respondents both on their Complaint against Petitioner and on Petitioner's Counterclaim against them.

Petitioner took her appeal of right to the Maine Supreme Judicial Court. The Maine Supreme Judicial Court affirmed the judgment in favor of Respondents, holding that the judgment entered in the Superior Court "was not the result of a denial of self-representation or unfair bias on the part of the Court and did not improperly supercede a prior pretrial order." (Appendix M to Petition).

Petitioner seeks review of the Maine Supreme Judicial Court's decision.

A party is not necessarily entitled to a jury trial in every case. Cases can be disposed of short of trial in a number

of ways, for example, pursuant to a Motion to Dismiss, or, as in this case, a Motion for Summary Judgment. It is not necessary to cite any case authority for this proposition.

Quite simply, Respondents prevailed in this case pursuant to a Summary Judgment Motion under M.R.Civ.P. 56 (substantially similar to F.R.Civ.P. 56), and that decision was affirmed on appeal.

Respondents, who have been hounded by the most aggressive litigation tactics of Petitioner for a number of years now, are compelled to point out that the underlying case in which Respondents were counsel for Petitioner, Walter v. Grover, and as a result of which Petitioner claimed in this case that the representation was inadequate, Petitioner was found to have defrauded the elderly Ms. Walter by registering a deed which Ms. Walter did not intend to deliver.

The deed purported to convey property from Ms. Walter to Petitioner. The Findings and Order in Walter v. Grover, Lincoln County Civil Action Docket No. 85-03, are attached for the Court's convenience and labelled Attachment B.

The Petition should be denied because it raises no issue of importance or justice. The Petition should be denied for the further reason that the Petitioner has failed to present with accuracy and clarity those matters necessary to a ready and adequate understanding of the points requiring consideration. (Rule 14.5 of the Rules of the Supreme Court of the United States.) Specifically, Petitioner has consistently misstated the record in her Statement of the Case in her Petition. For example, at page 4, she suggests that Justice Lipez refused to hear her arguments (at the Summary Judgment Motion

hearing) because she was not represented. The transcript clearly indicates that Justice Lipez was most patient with Petitioner and gave her an opportunity to respond to the points raised by Respondents in their Summary Judgment Motion. As a further example, Petitioner makes the assertion that "Court records and trial exhibits in Walter v. Grover have been altered." (Petition at 5). That allegation of egregious misconduct has no basis in fact whatsoever.

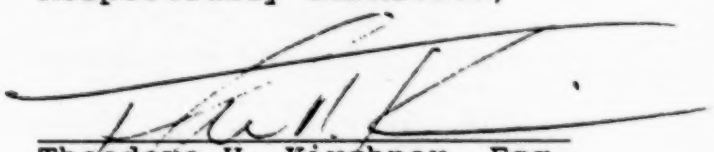
Perhaps what is most telling of the materials before this Court about Petitioner's litigation style, is the document entitled "Corrections to Transcript of Hearing", which is part of Appendix L of the Petition. In that document, Petitioner makes wholesale changes to the transcript of the Summary Judgment Motion hearing.

While it is a grand notion that any citizen with a legitimate grievance may ultimately have his or her grievance addressed by the highest Court in the land, this case is not deserving of this Court's time and consideration. Petitioner remains disgruntled because her efforts to defraud Ms. Walter out of a valuable piece of real estate were frustrated. While it is appropriate for this Court, as it was appropriate for Maine's court system, to be deferential to, and respectful to, the arguments of pro se litigants, Petitioner's persistent misstatements of fact and blatant misrepresentations of the record make it difficult for Respondents to oppose graciously her nagging and insulting filings, which have included a Board of Bar Overseers complaint about undersigned counsel.

CONCLUSION

For any or all of the reasons set forth herein, this Court should reject the Petition for Writ of Certiorari.

Respectfully submitted,



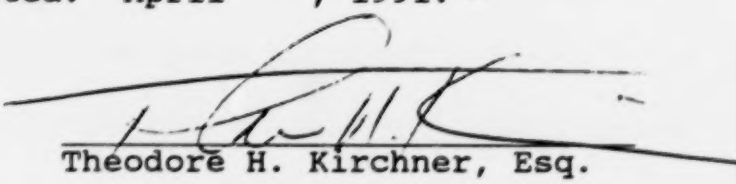
Theodore H. Kirchner, Esq.
Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that forty (40) copies of the within Brief in Opposition to Petition for Writ of Certiorari to the Maine Supreme Judicial Court of the Respondents have been deposited in the United States Mail this date, postage prepaid, to Joseph F. Spaniol, Clerk of the U.S. Supreme Court, 1st Street, N.W., Washington, D.C. 20543.

Three (3) copies of the Brief have been served upon Elaine E. Grover, Petitioner by depositing the same in the United States Mail, this date, postage prepaid, and addressed to her as follows: Elaine E. Grover, R.R. #3, Box 937, Wiscasset, Maine 04578.

Dated: April , 1991.



Theodore H. Kirchner, Esq.

ANDROSCOGGIN, SS. SUPERIOR COURT
CV-89-184

WILLIAM ROCHELEAU, JR.,

Plaintiff

v.

EXPEDITED
PRETRIAL
ORDER

ELAINE GROVER,

Defendant

Pursuant to Rule 16(c)(1), M.R.Civ.P., the court has reviewed the pleadings and the Pretrial Scheduling Statement in this action. IT IS ORDERED that the case be placed on the expedited pretrial list, and that:

1. **Discovery and Placement of Case on Trial List.**

Discovery shall be completed by December 1, 1989, and the clerk shall place the action on the (jury) trial list 30 days after that date. Expert witnesses shall be designated by the parties sufficiently early within the

discovery period so as to allow other parties time to take discovery and to designate expert witnesses of their own.

2. **Report of Conference of Counsel.**

Prior to the date fixed for the completion of discovery, counsel shall confer for the purpose of identifying witnesses, marking exhibits, setting forth the issues and entering into stipulations. No more than 10 days after the date fixed for the completion of discovery, counsel for the plaintiff shall file a report of the conference with the court, which report shall include a list of witnesses, exhibits, issues and stipulations. It shall also indicate the respective estimates of counsel of the time required for trial and the latest date (not less than 14 days before trial) by which names and

addresses of newly discovered witnesses and copies of newly discovered exhibits shall be furnished to opposing counsel.

Any witnesses or exhibits not listed in the conference report may be excluded by the court if it appears that adverse parties would be prejudiced by calling of the witness or introduction of the exhibit, or that adverse parties have not had adequate notice and opportunity to discover and to prepare for the testimony of the witness or review the content of the exhibit.

3. **Trial.**

Counsel signing the report of conference of counsel shall be deemed to be trial counsel, unless the court is otherwise advised in said report. The legal and factual issues at trial shall be as stated in the pleadings unless shown to be different in the report of the conference.

4. **Settlement.**

The parties shall notify the court that the action has been settled at any time prior to the date on which the action is placed on the trial list. After that date, the action shall be considered fully prepared for trial.

5. **Further Action.**

_____

_____

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_____

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6. **Objections to Order.**

Any party who objects to any of the terms of this order, or who objects to the placement of the action on the expedited pretrial list, shall file a motion to amend such terms, pursuant to Rule 7(b) of the M.R.Civ.P. within 10 days of notice of this order.

ORDER: Pursuant to Rule 79(a) M.R.Civ.P., the clerk is directed to make the following entry in the docket of this case:

"Expedited Pretrial Order filed. Discovery to be completed by December 1, 1989. Case ordered placed on the (jury) trial list 30 days after close of discovery. By Order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket."

Dated: June 14, 1989

_____

Justice, Superior Court

STATE OF MAINE
LINCOLN, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-85-03

ZOYA WALTER,	)	
	)	
Plaintiff	)	
	)	
v.	)	FINDINGS AND ORDER
	)	
ELAINE GROVER	)	
	)	
Defendant	)	

Findings of Fact

This matter was tried before the court on April 22 and 23, 1987. The plaintiff is a 69 year old widow who has lived in Russia, China, Germany, Canada and the United States. After her husband's death in 1977, she moved to Wiscasset to live with her sister until her sister's death in 1980. The plaintiff was left the home and land which is the subject matter of this litigation in her sister's will.

The defendant became acquainted with the plaintiff after her move to Wiscasset in 1977 as the defendant performed

housekeeping chores and ran errands for the sisters up to a few months before this trial. The plaintiff does not drive and was primarily dependent on the defendant to take her to do errands. The defendant also helped her around the house and was available to the plaintiff day or night. The plaintiff did not pay defendant for her assistance directly but did pay for all expenses when they were on trips or eating out.

The plaintiff, in appreciation of the efforts of the defendant, prepared a will (Pl. Ex. 1) on August 28, 1981, in which she bequeathed $5,000 to defendant and $5,000 to defendant's daughter. Plaintiff in the same year sold the real estate which is the subject matter of this controversy to a relative of her late sister. This sale was ultimately reversed when that relative failed to

make payment on the mortgage held by plaintiff and she foreclosed the mortgage.

In 1983 plaintiff prepared another will herself (Pl. Ex. 2) in which she named defendant as her executrix and the primary beneficiary of the real estate in question. At plaintiff's request, the defendant took her to Attorney Ervin D. Snyder who redrafted plaintiff's self-prepared will to conform the same to Maine law. At the same time the will was being drafted, Attorney Snyder also prepared a power of attorney for the plaintiff to be exercised by defendant and the deed in question transferring the real estate from plaintiff to defendant.

Five days later, on July 21, 1983, plaintiff was taken back to Attorney Snyder's office to execute the will and power of attorney. After consulting with Attorney Snyder, the plaintiff decided

not to execute the deed as he explained that she would lose control of her home and could not sell it if it later became necessary to do so.

The defendant was not present during the execution of the documents and the discussion of plaintiff and Attorney Snyder, but drove her to that appointment. After they returned to plaintiff's home the defendant reviewed the documents and discovered the deed was not executed. The defendant prevailed on plaintiff to call Attorney Snyder's office and make arrangements for the defendant to pick up that deed.

On July 28, 1983, the defendant took the plaintiff to the Lincoln County courthouse where plaintiff spoke to Roy Farmer who had an office there as he was the County Treasurer. Plaintiff asked Mr. Farmer what would happen if she signed the deed and he told her she would

give up title to her home. He felt that the plaintiff as somewhat confused and advised plaintiff that he could not acknowledge her signature as he did not have his notary seal with him.

The defendant took the plaintiff to Mr. Farmer's private office in Wiscasset where plaintiff executed the deed. Plaintiff and defendant returned to the Courthouse and went to the registry of deeds. The deputy register of deeds saw the plaintiff go into the register's office and overheard plaintiff's conversation with the register. The plaintiff was excited and wanted to know if she recorded the deed would she still own her home. The register advised her that if she did record the deed then she would give up ownership of her home. Upon hearing this plaintiff left the registry and did not record the deed.

The plaintiff and defendant went back to plaintiff's home where the plaintiff gave the deed, power of attorney and will to defendant to put into the defendant's safe deposit box on the understanding that they were to be returned to the plaintiff after plaintiff and defendant returned back to Wiscasset from a trip they both were taking to Florida.

The deed was recorded on July 28, 1983 at 1:55 p.m. and the power of attorney was recorded on May 29, 1984 at 1:30 p.m. The court finds that the plaintiff did not know or consent to the recording of either instrument. The lady who recorded the deed and provided a receipt in the name of the plaintiff testified that the person who recorded the deed was the defendant, Elaine Grover.

The plaintiff discovered during the winter of 1983-84 that the defendant had recorded the deed and asked defendant to deed it back. Defendant refused to reconvey and this lawsuit commenced.

Discussion

I. Conveyance of the Deed

When either language in a deed is ambiguous or the intention of the parties is in doubt the court may examine a deed in light of extrinsic circumstances surrounding its execution. See Holden v. Morgan, 516 A.2d 955, 956 (Me. 1986) (citations omitted). In this case, although the face of the deed unambiguously reveals the conveyance of the property from the plaintiff to the defendant, there is dispute regarding the delivery of that instrument. Legal delivery of a deed requires that the grantor transfer the deed to or for the benefit of the grantee with the intent to

vest that title in the grantee. Pierre v. Grondin, 513 A.2d 1368, 1369 (Me. 1986) (citations omitted). The grantor's intention is a question of fact to be determined from his or her words and actions. Id.

This Court is convinced by the evidence in this case that the grantor did not intend to transfer title to the grantee. In fact, her actions evince an unequivocal desire to retain title until the event of her death or in case sale of the property became necessary. Consequently, the court finds that legal delivery of the deed was not effectuated, and the defendant must reconvey the deed to the plaintiff.

II. Intentional Infliction of Emotional Distress

An individual may be liable for the tort of intentional infliction of emotional distress if "he intentionally

or recklessly inflicts severe emotional distress upon another by engaging in extreme or outrageous conduct." Rubin v. Mathews, 503 A.2d 694, 699 (Me. 1986). Although the defendant's conduct was fraudulent, this court finds that the evidence does not support the elements of a claim for emotional distress.

In accordance with the above, the Order will be:

Judgment for the Plaintiff on Count I (Fraud). The Defendant is hereby ORDERED to reconvey the property to plaintiff and to pay her her costs.

Judgment for Defendant on Count III (Intentional Infliction of Emotional Distress).

Plaintiff failed to meet her burden on Counts II and IV. Judgment for defendant on those counts.

Date: July 22, 1987

Roland Cole
Justice, Superior Court